

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
STATE, *et al.*,

Federal Defendants.

and

NATIONAL SHOOTING SPORTS  
FOUNDATION, INC., FREDRIC'S ARMS  
& SMITHS, LLC,

Intervenor-Defendants.

No. 2:20-cv-00111-RAJ

**INTERVENOR-DEFENDANTS' NOTICE  
REGARDING SCOPE OF RELIEF**

**INTERVENOR-DEFENDANTS' NOTICE REGARDING SCOPE OF RELIEF**

Intervenor-Defendants National Shooting Sports Foundation, Inc. ("NSSF") and Fredric's Arms & Smiths, LLC respectfully submit this notice regarding the scope of relief in response to the post-hearing submissions of the State Plaintiffs (ECF No. 89) and the Federal Defendants (ECF No. 91).

Both the State Plaintiffs and Federal Defendants now agree, consistent with legal limits on the scope of preliminary injunctive relief (*see* Intervenor-Defs.' Resp. to Mot. for Prelim. Inj.,

1 ECF No. 83, at 14–17), that (assuming the Court decides that any relief is warranted) a narrower  
2 injunction addressing *only* the State Plaintiffs’ alleged harms would be “appropriate” and  
3 “feasible.” Further, both the State Plaintiffs and the Federal Defendants now propose narrower  
4 injunctions designed to maintain the existing level of regulatory restrictions on 3D-Firearms  
5 Files *while permitting the remainder of the challenged Rules to take effect as scheduled*.  
6 Subject to the comments below, the Intervenor-Defendants support a remedy narrowed in the  
7 manner the Federal Defendants suggest or, in the alternative, in the manner the State Plaintiffs  
8 suggest.

9 The Federal Defendants indicate that the Court could order that “the Department of  
10 Commerce maintain the same level of regulation of the export of 3-D firearms files through  
11 posting on the Internet that existed prior to the Final Rules,” and they provide an example of  
12 interim rulemaking that would implement this order. ECF No. 91 at 4, ECF No. 91-1. The  
13 Intervenor-Defendants support this remedy, which would redress the harms the State Plaintiffs  
14 allege while avoiding irreparable harm to NSSF and its members.

15 Alternatively, the State Plaintiffs offer a proposed order designed to be “narrowly tailored  
16 to preserve the status quo as to the Munitions List items at issue in this case.” ECF No. 89-1 at  
17 1. If the Court disagrees with the Federal Defendants’ suggested remedy, the Intervenor-  
18 Defendants support the State Plaintiffs’ proposed order, *with three discrete modifications*. *First*,  
19 the relevant technical data should encompass only the data needed to produce firearms or firearm  
20 parts *using a 3D printer*, as distinct from other devices. *Second*, the relevant technical data  
21 should encompass data “directly related to” the production of firearms or firearm parts (as the  
22 State Department’s regulations currently provide), as distinct from any technical data “related  
23 to” firearms or firearm parts or that “can be used” to produce these items. *See* 22 C.F.R.  
24 § 121.1(I)(i). *Third*, the definitions of “technical data” and “software” should simply use the  
25 same definitions already provided in the State Department’s ITAR regulations. *See id.* § 120.10,  
26 120.45.

1           The Intervenor-Defendants attach (as Exhibit 1) a copy of the State Plaintiffs’ proposed  
2 order indicating the surgical revisions needed to effectuate their goal of maintaining the status  
3 quo with respect to the 3D-Firearm Files. With these revisions, the State Plaintiffs’ proposed  
4 order would redress the State Plaintiffs’ alleged harms while avoiding irreparable harm to NSSF  
5 and its members.<sup>1</sup>

6           Without waiving any rights to appeal an injunction that harms NSSF or its members, the  
7 Intervenor-Defendants support a remedy narrowly tailored to the State Plaintiffs’ alleged harms,  
8 as indicated above. Indeed, any preliminary injunction enjoining the Rules more broadly would  
9 exceed this Court’s authority.

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24       <sup>1</sup> To the extent the Federal Defendants “have concerns about the feasibility of severing regulation  
25 of ‘technical data’ from the regulation of the underlying defense articles,” ECF No. 91 at 2,  
26 Intervenor-Defendants point out that the revised USML (set to go into effect March 9, 2020)  
already provides for such regulation: USML Category I(i) includes “classified technical data  
directly related to items controlled in ECCNs 0A501, 0B501, 0D501, and 0E501.” 85 Fed. Reg.  
3819, 3830 (Jan. 23, 2020). ECCN 0A501 is the Commerce Department designation at issue here.

1 DATED this 5th day of March, 2020.

2  
3 AKIN GUMP STRAUSS HAUER & FELD LLP

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6 /s/ James E. Tysse

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16 \* Licensed to practice in New York only and under  
17 the direct supervision of a partner of Akin Gump  
18 Strauss Hauer & Feld LLP who is an enrolled,  
19 active member of the District of Columbia Bar;  
20 application for admission to the D.C. Bar pending.

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22 *Attorneys for Intervenor-Defendants*  
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on March 5th, 2020, I electronically filed the foregoing document  
3 with the Clerk of Court using the CM/ECF system, which will send notice of filing to all parties  
4 registered in the CM/ECF system for this matter.

5 DATED: March 5th, 2020

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7 /s/ Ross Siler

8 Ross Siler  
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